

# 关于锡拉拉河水域地位和使用问题的争端<sup>1</sup>

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## [案件导读]

本案涉及玻利维亚和智利关于锡拉拉河系统法律地位及该河水资源使用问题的争端。智利主张锡拉拉河是一条源起玻利维亚、流入智利境内的国际河流，本国对该河水资源的利用不需经玻利维亚政府批准，更不需向其支付任何费用。玻利维亚则主张锡拉拉河是其独有的原始地下水，因此对该河的水资源享有完全的使用权利，并要求智利为使用该河的水资源进行补偿。本案的焦点问题是锡拉拉河是否构成两国之间的跨境水资源及两国关于该河水资源的相关权利和义务。2016年6月，智利将该争端提交国际法院。目前该案仍在审理中。

## [关键词]

国际河流，国际水道，国际流域，跨界地下水，跨界含水层，跨界水资源利用，国家权利，公平合理利用原则，不造成重大损害原则，互通信息与资料义务

## 一、锡拉拉河争端的产生与发展

锡拉拉河（Silala River）位于分隔玻利维亚和智利的阿塔卡马沙漠（Atacama Desert），发源于玻利维亚阿尔蒂普拉诺地区（Altiplano）地下水泉形成的高海拔湿地。<sup>2</sup> 锡拉拉河总长 8.5 公里，大约 3.8 公里部分位于玻利维亚境内，4.7 公里位于智利境内。<sup>3</sup>

1904 年，智利和玻利维亚签署了《和平友好条约》（the Treaty of Peace and Friendship），并确立了两国间的国际边界。<sup>4</sup> 1906 年，智利授予了玻利维亚安

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<sup>1</sup> *Dispute over the Status and Use of the Waters of the Silala* (Chile v. Bolivia), ICJ, 2016. 简称“锡拉拉河案”。

<sup>2</sup> B. M. Mulligan & G. E. Eckstein, *The Silala/Siloli Watershed: Dispute over, the Most Vulnerable Basin in South America*, Water Resources Development, Vol. 27, No. 3, 595 – 606, September 2011, p. 595.

<sup>3</sup> *Dispute over the Status and Use of the Waters of the Silala* (Chile v. Bolivia), Application, 2016 I.C.J., p.10, para. 10.

<sup>4</sup> Treaty of Peace and Friendship entered into by Bolivia and Chile, 20 October 1904 and published in the Official Gazette No. 8169 of 27 March 1905, application, (Annex

托法加斯塔铁路公司 (Ferrocarriil de Antofagasta a Bolivia, 下称“FCAB”) 在智利境内使用锡拉拉河水资源的特许权, 为无限期地增加安托法加斯塔港的水流量。<sup>5</sup> 1908 年, 玻利维亚波托西 (Potosi) 地区当局批准 FCAB 公司在玻利维亚境内使用锡拉拉河水资源用于蒸汽机操作, 从采矿作业中提取硝酸盐, 并准许该公司建造出水口和开凿运河工程。<sup>6</sup> 锡拉拉河是智利 FCAB 公司和国营铜矿公司 (Coporacio’n Nacional del Cobre, 下称“CODELCO”) 管理的丘基卡马塔 (Chuquicamata) 矿的重要水源。<sup>7</sup> 为了收集水源, FCAB 建造了一条明渠、一条南运河和一条北运河, 以注入一条主运河, 并在其他地方用爆破岩石建造水库。<sup>8</sup> 南运河长近 3km, 占主运河流量的 2/3 左右, 北运河长度不足 1km, 占主运河流量的 1/3 左右。主运河引导玻利维亚境内约长 700 米的河段, 然后穿过国际边界流入智利安托法加斯塔 II 区。在智利境内, 主运河流至 7 千米至其与塞拉多河 (Helado) 交汇处, 形成了圣佩德罗·伊纳卡利里瑞河 (San Pedro de Inacaliri)<sup>9</sup>。1961 年后, FCAB 公司用柴油机取代了蒸汽机, 但那时, 智利已经把锡拉拉河水用于其他工业和饮用水用途。<sup>10</sup>

1996 年 5 月 7 日, 玻利维亚政府发布的一份正式新闻稿中指出, 锡拉拉河的水流被人为地转移到智利境内, 且确信智利在过去一个多世纪里一直使用锡拉拉河的河水, 而没有给玻利维亚带来任何好处, 并宣布将这一问题列入双边磋商

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9. 1).

<sup>5</sup> Deed of Concession by the State of Chile of the waters of the Siloli (No. 1892) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 31 July 1906, application, (Annex 11).

<sup>6</sup> Deed of Bolivian Concession of the waters of the Siloli (No. 48) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 28 October 1908, p. 2, application, (Annex 12).

<sup>7</sup> B. M. Mulligan & G. E. Eckstein, *The Silala/Siloli Watershed: Dispute over, the Most Vulnerable Basin in South America*, Water Resources Development, Vol. 27, No. 3, 595 - 606, September 2011, p. 597.

<sup>8</sup> Fernando Urquidi Barrau, Water Resources in Bolivia: A Strategic Viewpoint of the Issues

Associated with Transboundary Waters, in D IAGNOSIS OF WATER IN THE A MERICAS 91, 115 (Blanca Jiménez-Cisneros & José Galizia-Tundisi eds., 2013); ELLIE B URNHAM ALLEN, SOUTH AMERICA 275 (1918) (created reservoirs).

<sup>9</sup> B. M. Mulligan & G. E. Eckstein, *The Silala/Siloli Watershed: Dispute over, the Most Vulnerable Basin in South America*, Water Resources Development, Vol. 27, No. 3, 595 - 606, September 2011, p. 596.

<sup>10</sup> Gustavo Meza Bórquez, *Chile/Bolivia: ¿Es el río Silala un factor de tensión secundario?* 2 R EVISMAR 154, 154 (2014).

议程。1997 年 5 月 14 日，玻利维亚撤销了 FCAB 使用锡拉拉河水域的特许权，理由是该公司的原开采目标和宗旨不复存在。在此决议中，玻利维亚将锡拉拉河的水域称为“泉水”（springs），避免将锡拉拉河称为河流。1999 年，玻利维亚政府首次声称锡拉拉河的水域完全属于玻利维亚。2000 年，玻利维亚批准了其国内私营的 DUCTEC S. R. L 公司（下称“DUCTEC”）使用锡拉拉水资源的特许权，为期 40 年，特许 DUCTEC 将工业用水和人类消费用水商业化地排向智利。此特许权明确了在没有公用事业特许权时，禁止在玻利维亚境内使用饮用水和进行排污服务，以及禁止第三方在玻利维亚境内的采矿活动。<sup>11</sup> 2000 年 5 月，DUCTEC 试图向 CODELCO 公司和 FCAB 公司开具使用锡拉拉水资源的发票，无视这两家公司在智利领土上使用锡拉拉河的现有权利。<sup>12</sup> 智利正式反对 DUCTEC 公司的特许权，因为它无视了锡拉拉河的国际性质和智利使用其水资源的权利。<sup>13</sup>

玻利维亚外交部在 2002 年公开否认存在与锡拉拉河流域有关的任何形式的双边谈判。双方试图就锡拉拉河问题达成谅解，譬如成立联合技术工作组，把锡拉拉河问题列入双边议程，但并没有决有关分歧。<sup>14</sup> 2010 年，玻利维亚主张对锡拉拉河拥有 100% 的主权，智利需要为长达一个世纪使用锡拉拉河水支付历史债务（historic debt）。<sup>15</sup>

2016 年 3 月 23 日，玻利维亚总统宣布将向国际法院起诉智利“偷水”。2016 年 6 月 6 日，智利向国际法院提交起诉状，正式启动其与玻利维亚关于锡拉拉河法律地位和水资源使用问题的争端解决程序。

## 二、智利的主张和依据

智利认为两国的争端涉及锡拉拉河的性质以及由此产生的双方根据国际法产生的权利和义务。智利在起诉书中请求法院裁定并宣布：

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<sup>11</sup> Concession Contract for the Use and Exploitation of the Springs of the Silala between the Bolivian Superintendent of Basic Sanitation and DUCTEC S. R. L., 25 April 2000, application, (Annex 23).

<sup>12</sup> Application, p. 14, para. 25.

<sup>13</sup> Note No. 006738 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 27 April 2000, application (Annex 24).

<sup>14</sup> Application, p. 16, para. 28.

<sup>15</sup> Application, p. 16, para. 32.

(1) 锡拉拉河系统，包括该系统的地下组成部分，属于国际水道 (international watercourse)，其使用受制于习惯国际法；

(2) 智利有权根据习惯国际法公平合理地利用锡拉拉河的水资源；

(3) 根据公平合理利用原则，智利有权对锡拉拉河的水资源进行目前的使用；

(4) 玻利维亚有义务采取一切适当措施来避免和控制其在锡拉拉河附近的活动对智利造成污染和其他形式的损害；

(5) 玻利维亚有义务进行合作，及时向智利通报计划采取的措施；若措施可能会对共享水资源造成负面影响，须交换数据和信息，并酌情进行环境影响评价。

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显然，智利提起的第 2-5 项诉求皆以第 1 项诉求为前提，只有在本国证明及法院认定锡拉拉河属于国际水道的情况下，智利才可基于相关国际法及有关事实对锡拉拉河的水资源主张相应的权利，才可主张玻利维亚须承担相关的义务。

智利声称锡拉拉河发源于“距离智利-玻利维亚国际边界东北几公里处”玻利维亚领土内的地下泉水，穿过边界流入智利领土，并在智利境内，“有多支泉水汇入……最后流入伊纳卡利里瑞河 (Inacarili River) ”。<sup>17</sup>

智利认为，水文地质、地形坡度和历史资料表明，在 1908 年开渠之前，锡拉拉河的河水经过地表陆路流向智利。一幅早期的由智利委托亚历山大·伯坦兰 (Alejandro Bertrand) 绘制的锡拉拉河地图显示，玻利维亚领土上的卡宏河 (Cajón River, 当时 Silala 河的名称) 越过智利根据 1884 年双方《停战协定》管理的领土，并与圣佩德罗河 (Río S. Pedro, 伊纳卡利里瑞河的延续) 相连。<sup>18</sup> 一幅 1890 年的玻利维亚地图上也显示了一条名为“卡宏河”的水道，与圣佩德罗河相连。<sup>19</sup>

1904 年，智利和玻利维亚签署了《和平友好条约》(Treaty of Peace and Friendship)，确定了两国的边界，并通过了一份地图。地图表明锡拉拉河 (Río

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<sup>16</sup> Application, p. 22, para. 50.

<sup>17</sup> Application, p. 10, para. 10.

<sup>18</sup> Alejandro Bertrand, *Mapa de las Cordilleras*, 1884, application, (Annex 7).

<sup>19</sup> Justo Leigue Moreno, *Mapa Geográfico y Corográfico*, 1890, application, (Annex 8).

Silala) 位于智利和玻利维亚的边界上。<sup>20</sup> 1906 年, 两国的边界委员会在勘定边界时确定了锡拉拉河的位置, 在标界考察期间, 玻利维亚的边界委员会也证实了锡拉拉河的存在。<sup>21</sup>

1908 年玻利维亚把特许权授予 FCAB 后, 智利在一百多年间把锡拉拉河的水资源用于不同目的, 包括向安托法加斯塔市 (Antofagasta)、塞拉戈达 (Sierra Gorda) 和巴基达诺镇 (Baquedano) 提供水源和用于工业用途。智利声称, 1908 年的运河工程并没有改变锡拉拉河的流向, 只是沿原航道增加了自然流量, 锡拉拉河水来源于跨越两国边界地下含水层的补给。

智利认为玻利维亚多次接受将锡拉拉河绘制成河流的地图, 智利—玻利维亚混合边界委员会 (the Chile-Bolivia Mixed Boundary Commission) 也多次证实边界两侧存在锡拉拉河。玻利维亚长期以来一直承认锡拉拉是国际水道, 直到 1997 年才突然改变立场, 声称“锡拉拉河是泉水, 其水资源完全位于玻利维亚的领土之上”。<sup>22</sup> 智利主张锡拉拉河自古以来是一条国际水道, 智利合法使用锡拉拉河水资源且不需要向玻利维亚支付任何费用, 玻利维亚取消原来的特许权以及玻利维亚授予最近的 DUCTEC 特许权都是非法的。

### 三、玻利维亚的主张和依据

玻利维亚在反诉状中请求法院裁定:

- (1) 玻利维亚对位于其领土上的锡拉拉河的人工渠道和排水系统拥有主权, 并有权决定是否维护且如何维护这些渠道和排水系统;
- (2) 玻利维亚对在其领土内产生的锡拉拉河人工水流享有主权, 智利无权使用这种人工水流。
- (3) 从玻利维亚向智利输送锡拉拉河人工水流的输送方式、条件, 包括上述运输的补偿费用, 智利均须同玻利维亚协议确定。<sup>23</sup>

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<sup>20</sup> Map appended to the Treaty of Peace and Friendship, 20 October 1904, application, (Annex 9.2).

<sup>21</sup> Report signed by Quintín Aramayo Ortiz, 14 August 1906, in *Antecedentes Límites Chile-Bolivia*, pp. 14-18, application, (Annex 10.2).

<sup>22</sup> Application, pp. 12-13, para. 22.

<sup>23</sup> *Dispute over the Status and Use of the Water of the Silala* (Chile v. Bolivia), Order of 15 November 2018, I.C.J., p. 2.

玻利维亚声称锡拉拉河不是一条国际河流，1908 年 FCAB 公司为了修建运河人为地将该水域改道，从而经运河流向智利。如果没有经过人工改造，锡拉拉湿地会由专属于玻利维亚境内的 70 处泉水形成，仅受蒸发的影响。<sup>24</sup>玻利维亚进一步说明，如果锡拉拉河是一条国际河流，智利的公司就不需要向玻利维亚当局申请转让源头水域的权利，也不用花大量的资金来引导、调整锡拉拉水流方向。

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## 四、锡拉拉河的法律地位问题

### （一）国际水资源概念的演进

国际水资源又称为国际淡水资源或跨国淡水资源，目前国际上还没有统一的定义。《联合国环境规划署环境法教程》的定义是，国际水资源就是共享水资源，包括国际河流的出、入口，及两个国家之间管辖的地下水系统，国际湖泊及其支流。<sup>26</sup> 随着人类对水文科学认识的不断变化及对国际河流水资源利用和保护的发展，国际水资源的概念也从最初的国际河流、国际水道，逐步演变为范围更为宽泛的国际流域。

在国际河流开发利用的早期，国际河流的通航和航行自由及管理是国际社会关注的重点。1815 年的《维也纳和会规约》规定，国际河流是“分隔或经过几个国家的可通航的河流”。国际河流的概念在此后基本没有变化，国际河流的地域范围甚至扩大到河流的支流。常设国际法院在 1929 年的奥德河案（*Case relating to the Territorial Jurisdiction of the International Commission of the River Oder*）的判决中指出，奥德河委员会的管辖范围应扩大到波兰境内的奥德河支流瓦泰河和奈兹河。<sup>27</sup> 1934 年《国际河流航行规则》第一条指明，

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<sup>24</sup> Leo Robles Belmar, *Chile prefiere perder una batalla*, L ATINOAMÉRICA P IENSA (June 28, 2016), <http://latinoamericapiensa.com/politica/3629-batalla-por-el-silala-a> (quoting Bolivian Foreign Ministry Vice Chancellor, Juan Carlos Alurralde)

<sup>25</sup> Leo Robles Belmar, *ibid.*, (quoting Bolivian Foreign Ministry Vice Chancellor, Juan Carlos Alurralde: “*Se estima que la compañía gastó alrededor de 5 millones de dólares, lo cual es mucho dinero para esos años, los que se invirtieron en construir canales, redes de drenaje, ampliar obras colectoras, incluso para dinamitar los manantiales y así aumentar el caudal y forzar artificialmente el flujo de agua hacia Chile.*” ).

<sup>26</sup> 王曦主编/译：《联合国环境规划署环境法教程》，法律出版社 2002 年版，第 272 页。

<sup>27</sup> *Case relating to the Territorial Jurisdiction of the International Commission*

国际河流是指“河流的天然可航部分流经或分隔两个或两个以上国家，以及具有同样性质的支流。”这意味着国际河流也包括可能完全位于一国境内的国际河流的支流。

“国际水道”是与“国际河流”相似的概念，既涉及水道的航行利用，也涉及非航行利用。在资本主义迅速积累时期，各国需要充分利用国际水道扩大国际通商，为了适应当时社会的需要，国际河流的可通航性和商业价值被着重强调。1921 年《国际性可航水道制度公约及规约》直接使用了“国际性可航水道”（navigable waterways of international concern）的用语，并将其定义为“流经几个不同国家的天然可通航水道，以及其他天然可航的通海水道与流经不同国家的天然可航水道相连者”，强调水道的“天然可航”及“分隔或流经不同国家”。

20 世纪 50 年代后，各国逐渐扩大了对国际水道的非航行利用，人类开始大量抽取地下水，国际社会也开始关注水资源生态系统，国际流域的概念开始出现。1966 年的《赫尔辛基规则》第二条指出国际流域是指“跨越两个或两个以上国家，在水系的分界线内的整个地理区域，包括该区域内流向同一终点的地表水和地下水。”国际流域概念的提出后，扩大了国际水资源的范围，把国际河流和国际水道从干流与支流扩大到整个河流及支流的地表水与地下水系统。随着国际社会日益重视国际流域的生态环境保护，20 世纪 90 年代以来的公约、条约和文件多以国际流域为调整对象，更加强调对国际水资源的综合管理和可持续发展。

综上，随着最初的国际河流概念的发展到国际流域的概念，国际水法调整的范围不断扩大。人类对国际水资源的关注方向也适应时代的发展而变化，从早期关注河流的可通航性，发展到越来越重视非航行利用，进而重视国际流域的综合管理、生态环境保护及可持续发展。

## （二）跨界地下水的利用和保护

地下水是指位于地面之下的含水层中，与地面或土壤直接接触的水。地下水可分为潜水和承压水。潜水又被称为无压水，具有自由水面，直接靠大气降水、地表水和其他水源的补给，没有稳定的隔水层。承压水则指封闭的地下水，位于两个隔水层之间，通常情况下不能与大气接触，不易受污染。<sup>28</sup> 在国际水资源

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*of the River Oder* (United Kingdom, Czechoslovak Republic, Denmark, France, Germany, Sweden and Poland), 1929 P.C.I.J. (ser. A), No. 23.

<sup>28</sup> Gabriel E. Eckstein, *Hydrological Reality: International Water law and*

的构成中, 跨界地下水部分是一个备受关注的焦点问题。国际社会逐渐形成了一些涉及跨界地下水的条约和软法性文件, 并把国际水资源的范围扩大到跨界地下水。

20 世纪 50 年代至 60 年代, 地下水作为一个法律概念开始出现于一些边界水域条约中, 譬如苏联和东欧国家签订的边界水域条约、德意志民主共和国和波兰之间的边界水域协议等。<sup>29</sup> 20 世纪 70 年代开始, 有关跨地下水的国际立法迅速发展, 其中涉及多项公约。1992 年联合国欧经委《关于跨境水道和国际湖泊保护和利用的公约》(简称“联合国欧经委水公约”) 第一条第一款指明“跨境水”为“何标识、跨越或位于两个及两个以上国家边界的地表和地下水”,<sup>30</sup> 该定义的关键词明显是跨界、地表水和地下水。<sup>31</sup> 该公约调整的对象包括标识、跨越或位于两个及两个以上国家边界的地表水以及封闭和非封闭的含水层。<sup>32</sup> 1995 年南部非洲发展共同体《关于共享水道系统的议定书》(1995 SADC Protocol on Shared Watercourse Systems) 第一条规定: “水道系统是指流域的相互联系的水文组成部分, 诸如河流、湖泊、运河、地下水, 由于其之间的自然关系, 构成一个整体单元”。1997 年联合国大会通过《国际水道非航行使用法公约》(简称“联合国国际水道法公约”), 该公约的第二条将水道定义为而“地表水和地下水的系统, 由于它们之间的自然关系, 构成一个整体单元, 并且通常流入共同的终点”, 继而强调国际水道即为“组成部分位于不同国家的地表水和地下水系统, 由于自然联系构成一个单一的整体, 并且通常流入同一终点。”该公约强调了地下水与地表水的整体关系, 其定义的国际水道包含了水流通过的许多不同的组成部分, “不管是在地表, 还是地下, 包括河流、湖泊、含水层、冰河、水库和运河”,<sup>33</sup> 即涵盖了国际河流的主流及其支流、国际湖泊等地表水, 还包括与

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Transboundary Ground-Water Resources, paper and lecture for the conference on “Water: Dispute Prevention and Development”, American University Center for the Global South, Washington, D.C. (October 12-13, 1998).

<sup>29</sup> 张晓京, 邱秋. 跨界地下水国际立法的发展趋势及对我国的启示[J]. 河海大学学报(哲学社会科学版), 2012, 14(01): 60-64+91.

<sup>30</sup> Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 31 ILM 1312 (1992), Article 1 (1).

<sup>31</sup> UNECE, Guide to Implementing the Water Convention 14, ECE/MP.WAT/39 (2013), para. 71.

<sup>32</sup> UNECE, Guide to Implementing the Water Convention 14, ECE/MP.WAT/39 (2013), para. 73.

<sup>33</sup> Report of the International Law Commission on the Work of its Forty-six Session,



这些国际地表水有关联（通常流入同一终点）的地下水。在该公约编纂和制定过程中，国际法委员会于 1991 年通过的公约一读草案明确排除了与地表水不存在关联的地下水。1994 年国际法委员会通过了《关于跨界封闭地下水的决议》，建议各国将《国际水道非航行使用法条款草案》的规则适用于封闭地下水。

软法性文件对于推进跨界地下水的国际立法也起了重要作用，主要包括国际法学术团体的决议和规则，集中体现为国际法协会有关文件的制定。《赫尔辛基规则》首次将跨界地下水纳入了国际流域管理的概念，对跨界地下水的立法起到了先导作用。作为《赫尔辛基规则》的补充，1986 年国际法协会通过的《关于国际地下水的汉城规则》中指明国际流域水资源还应包括不与任何国际地表水有关联的跨界地下水，即封闭地下水。该规则第一条与第二条都指明，“为赫尔辛基规则之目的，国际流域还包括贯穿两个或两个以上国家之间的边界含水层，即使这一封闭地下水与国际共享地表水都不相联”。此后，诸多签订的双边条约或多边条约都采用了《赫尔辛基规则》中流域的定义方法，涵盖了不与地表水相联的跨界地下水，只是一些条约并未使用“国际流域”这一措辞，而采用了“跨界水体”或“共享水道系统”这一概念，譬如，1990 年《易北河公约》、1994 年《多瑙河保护和可持续利用合作公约》、1998 年《保护莱茵河公约》等等。国际法协会于 20 世纪末开始整合与修订《赫尔辛基规则》和《汉城规则》，根据已有的国际水法规则与习惯法，于 2004 年通过了《柏林水规则》。《柏林水规则》第三条第五款沿用了流域整体方法，规定“流域是指一个延伸到两国或多国的地理区域，其分界由水系统（包括流入共同终点的地表水和地下水）流域分界决定”。第十三条规定：“国际流域”是指一个延伸到两个或多个国家的流域。第四十二条明确指出，如果含水层与国际流域的地表水体部分相连，或者与形成国际流域的地表水体部分没有联系，但与由两个或多个国家的边界来分隔，则也适用跨国共享水体的规则。

综上，基于现有的国际法规则，国际流域应包括国际地表水以及与其相关联的地下水，但并不要求国际地表水与地下水有共同的终点，还包括与地表水无任何关联的封闭的跨国地下水。

随着人们对跨界含水层的开发与利用，关于对跨界含水层管理的法律也日益

受到国际社会的重视。2002 年, 国际法委员会将“共有的自然资源”列入编纂、发展的专题, 该专题首先集中于跨界地下水的研究。2008 年, 国际法委员会第 60 届会议二读通过了《跨界含水层法条款草案》。该草案规定跨界含水层和跨界含水层系统定义为组成部分位于不同国家的含水层及含水层系统, “含水层”和“含水层系统”被分别定义为“位于透水性较弱的地质之上的渗透性含水地质构造以及该地质构造饱和带所含之水”, “水力上相连的两个或两个以上含水层”, 不仅适用于与地表水存在联系的地下水及封闭的地下水, 还适用于含水层的补给区和排泄区。<sup>34</sup> 补给区即向含水层提供补给的区域, 其补给来源于大气降水, 地表水的渗入。排泄区指含水层的水排向其出口的区域, 排泄出口一般包括水道、湖泊、绿洲、湿地或海洋等等。<sup>35</sup> 对于《条款草案》的最终形式, 联合国大会通过决议确认无需基于该草案制定国际公约, 《条款草案》不具有法律约束力。但该草案对于跨界含水层的定义清楚, 涵盖范围广, 并且是在广泛采集多国关于跨界地下水的国家实践、双边和多边协议的基础上形成, 一定程度上反映了各国的意见, 对于跨界含水层的利用、保护和管理具有重要影响力。

### (三) 关于锡拉拉河地位的争论

本案中, 玻利维亚和智利的主要争论点是锡拉拉河是否为一条国际河流或国际流域。由于两国并未针对该河缔结条约或协定, 也并非联合国国际水道法公约或联合国欧经委水公约等国际公约的缔约方, 法院无法直接适用国际条约来裁断该争议, 而须根据习惯国际法或一般国际法来裁判有关争端和问题。

智利在其起诉书中主张联合国国际水道法公约、国际判例和国家实践反映了习惯国际法原则。<sup>36</sup> 它对此并未做出解释, 仅辩称“依据一般国际法, 跨越两个或多个国家的水道应被视为‘国际水道’”。<sup>37</sup> 它还直接提及了联合国国际水道法公约第 2 条“水道”的概念, 并称该条“反映了习惯国际法”。<sup>38</sup> 智利主张锡拉拉河跨越两国间的国际边界, 这一事实本身便可以支持法院得到该河属于国际水道的结论。<sup>39</sup>

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<sup>34</sup> UNILC, Draft Articles on the Law of Transboundary Aquifers, Article 2 (a), (b), (c) Yearbook of the International Law Commission vol. II (2) (2008).

<sup>35</sup> Draft Articles on the Law of Transboundary Aquifers, 2008. Article 2.

<sup>36</sup> Application, p. 20, para. 42.

<sup>37</sup> Application, p. 20, para. 43.

<sup>38</sup> Application. P. 20, para. 43.

<sup>39</sup> Application, p. 20, para. 44.

目前的信息表明，两国对此条约中“水道”的组成部分没有提出争议；他们对锡拉拉河的水是否由于天然关系构成一个整体的系统提出争论。玻利维亚坚持认为锡拉拉河是人为地通过排水网进入伊纳卡利里瑞河。智利坚持认为锡拉拉河是一条天然的越过边界的河流，锡拉拉河从未从原来的航道改道，因为运河工程只是增加了锡拉拉河的自然流量，锡拉拉河一直是一条国际水法上的跨界河流。

在本案中，锡拉拉河发源于玻利维亚阿尔蒂普拉诺地区地下水泉形成的高海拔湿地，泉水来源于穿越玻利维亚和智利边界的含水层的供给。锡拉拉水域中地下水与地表水的关系是鉴定其法律性质的关键。然而，目前双方尚未提交关于锡拉拉河流域的地质、水文状况的资料，关于该流域地下含水层的公开资料也很少，我们不得妄下结论。<sup>40</sup>

根据智利的起诉书，水道公约第二条将水道定义为“地表水和地下水的系统，由于它们之间的自然关系，构成一个整体单元，并且通常流入共同的终点”。这一定义相对于国际流域的定义显得非常的局限。首先这一定义排除了没有流入同一终点的相关水资源。有自然关系的地表水与地下水由于土壤的渗透性、密度和障碍物的分布不同，会向不同的方向流动，并不一定会流入相同的终点。<sup>41</sup> 如果锡拉拉河流域的地下水由于各种地理因素没有与其地表水流入同一终点，但在天然关系上仍构成一个统一的整体，那么否认锡拉拉河是一条国际河流，则显然是不合理的。再者，此定义说明只有与国际地表水相关并且构成一个整体的地下水才是国际水道，把与地表水无关的含水层排除了国际水道的范围。起草水道公约的国际法委员会曾明确指出“水道”并不包括封闭地下水，即与任何地表水无关的地下水不包括在内。<sup>42</sup> 该定义的局限性在于并未考虑干旱地区的特殊情况。在地表水稀少或不存在的地区，地下含水层也可能跨越国际边界。从地质、地理、历史的资料证明，在运河挖掘之前，锡拉拉河水沿着主运河相似的路径天然流过

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<sup>40</sup> Gabriel Eckstein, The Silala Basin: One of the Most Hydropolitically Vulnerable Basins in the World, International Water Law Project Blog (2011), <http://www.internationalwaterlaw.org/blog/2011/10/27/the-silala-basin-one-of-the-most-hydropolitically-vulnerable-basins-in-the-world/>.

<sup>41</sup> Gabriel E. Eckstein, Hydrological Reality: International Water law and Transboundary Ground-Water Resources, paper and lecture for the conference on “Water: Dispute Prevention and Development”, American University Center for the Global South, Washington, D.C. (October 12-13, 1998).

<sup>42</sup> Report of the International Law Commission on the Work of its Forty-six Session, UN Doc. A/49/10, Year Book of the International Law Commission, Vol II, Part 2 (1994), at 201.

边界，并有明显冲积层侵蚀的证据。<sup>43</sup>但水流的流动也许是间歇性的，并不是常年的，进一步加大了认定锡拉拉河法律地位的难度。<sup>44</sup> 如果锡拉拉河流域的地表水没有跨越边界，仅是与地表水没有相连的地下水跨越了边界，就断言锡拉拉河不是国际河流，也不合理。目前国际上跨界含水层的习惯法规则相对缺乏，《跨界含水层法条款草案》尚不是供各国开放签署的公约。本案的关键在于明确考察锡拉拉河地下水和地表水的关联，是自然的，还是人为。从现有的规则考虑，不排除人为因素对地下水与地表水关联的影响。

本案没有直接可适用的国际条约，法院须要诉诸一般国际法或习惯国际法上关于国际河流和跨境水资源的定义。依前文所述，在跨界水资源利用和保护领域，相关国际公约和软法文件及国际判例对国际流域均采用了范围较为宽泛的定义，且强调流域系统的整体性及一体化管理。法院在此基础上判定锡拉拉河水域地位时，需要着重考察该河组成部分之间的关系，尤其是地表水和地下水的关系，认证它们是否构成一个统一的整体，并且组成部分是否位于双方当四国境内，该系统是否构成或跨越两国的边界。第一，该河的自然状况显然是处理该问题的出发点，也是决定性的因素，因为若其组成部分不构成单一的整体单元，或者其组成部分仅位于一国境内，它便不属于国际水道。第二，法院必须考察并确定该河的地理、水文、水文地理、地质和生态等自然特征，尤其是该河的源头、供水、水流过程和终点，该河有哪些主要的组成部分，它们是地表水还是地下水，有关地下水是封闭的、半封闭的还是与地表水存在联系，它们之间存在何种物理和水文地理上的联系，是否足以构成单一的整体单元，尤其是当事国在某个部分的利用是否及如何对其他部分造成潜在或实际的影响，各个部分的地理位置及是否位于两国境内，等等。第三，由于双方都提及锡拉拉河的地下组成部分，在考察和界定有关联系时，法院显然需要着重考虑地表水和地下水之间的水文联系及地下水的补给区和排泄区的情况。第四，法院应当考虑双方关于该河的既有利用情况，

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<sup>43</sup> B.M. Mulligan & G.E. Eckstein, *The Silala/Siloli Watershed: Dispute over, the Most Vulnerable Basin in South America*, Water Resources Development, Vol. 27, No. 3, 595-606, September 2011, p. 597.

<sup>44</sup> Gabriel Eckstein, *The Silala Basin: One of the Most Hydropolitically Vulnerable Basins in the World*, International Water Law Project Blog (2011), <http://www.internationalwaterlaw.org/blog/2011/10/27/the-silala-basin-one-of-the-most-hydropolitically-vulnerable-basins-in-the-world/>. (noting, “to the extent that the flow of the pre-canalized Silala was intermittent rather than perennial, applicability of international norms also may be tenuous”).

这有助于确定一方对水道某些部分的利用是否会对其他组成部分造成实际的影响。第五，法院还应考虑双方在该河国际地位上的立场和态度，若玻利维亚如智利所主张的一贯承认该河属于国际水道，那么法院就必须给予该事实相应的份量。总之，法院需要综合考虑以上因素、事实和情况，依据相关的原则、标准和方法，从整体上客观认定该河的国际性质。

## 五、本案涉及的国际水法的基本原则

### （一）公平合理利用原则

智利在诉状中请求法院裁定：智利有权根据习惯国际法公平合理地利用锡拉拉河的水资源；根据公平合理原则，智利有权对锡拉拉河进行目前的使用。智利也指责了玻利维亚在上游建设的一系列工程会非法剥夺智利对锡拉拉河享有的公平合理开采的权利。

国际法委员会在条款草案的评注中指出，公平合理利用原则是有关国际水道利用和保护的基本原则，它规定了水道国的基本权利和义务。<sup>45</sup> 公平合理利用本为国际习惯法的一般规则，由于其本身的基础性和原则性的特点，贯穿于的国际水法制定与实施过程中。联合国欧经委水公约第二条中要求各沿岸国以“公平合理的方式利用跨界水体”，联合国国际水道法公约第五条和第六条规定强调合理开发利用和保护国际水资源，平衡各沿岸国的利益与需求。这些国际性的条约有效规制了国际淡水资源开发过程中的国家间权利义务的关系，均具体规定了诸如地理、水文、生态、社会经济发展、人口数量等的评价要素清单，以达到辅助认定公平合理利用国际水资源的行为。<sup>46</sup> 在多瑙河案（*Gabčíkovo-Nagymaros Project Case*）中，国际法院就从公平合理使用的方面否认了斯洛伐克的单方面建设行为。斯洛伐克无权因为建设施工而改变多瑙河的水流状态，匈牙利和斯洛伐克都有保护多瑙河生态系统资源的义务。<sup>47</sup>

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<sup>45</sup> UNILC, Draft Articles on the Law of the Non-Navigational Uses of International Watercourses with Commentaries, 96-97 Yearbook of the International Law Commission, vol. II (2) (1994).

<sup>46</sup> 饶健, 曾彤. 国际水资源公平合理利用原则的发展——以国际河流为视角[J]. 时代法学, 2018, 16(02): 106-112.

<sup>47</sup> *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment, I. C. J. Reports 1997, p. 56, para. 85.

一旦锡拉拉河被认定为国际水资源，公平合理利用原则作为一项习惯国际法的基本原则，就需要被适用于本案之中。根据习惯国际法，智利有权利公平合理地利用锡拉拉河水资源，玻利维亚不应剥夺智利对锡拉拉河合法开采的权利。

## （二）不造成重大损害原则

据智利所言，玻利维亚在锡拉拉附近确实建造了一个鱼塘、一个军事哨所，这些项目可能会对锡拉拉河的水质产生不利影响。<sup>48</sup> 根据习惯国际法，玻利维亚有义务采取一切适当措施来避免和控制其在锡拉拉河附近的活动对智利造成污染和其他形式的损害。<sup>49</sup>

国际水法中的不造成重大损害原则是指国家在开发利用国际水资源时，应采取控制措施、减少对其他沿岸国造成的环境污染或损害，尽到保护国际淡水资源不给其他沿岸国造成重大损害的义务，其根基来源于“使用自己的财产或行使权利不得伤害邻人或妨碍其享受的财产或权利”（*sic utere tuo ut alienum non laedas*）。<sup>50</sup> 联合国国际水道法公约第七条规定水道国在其境内开发利用水资源时，应采取一切措施防止对他国的重大损害；《关于国际水域的非航行利用的决议》第四条规定沿岸国不应为修建工程而严重影响其他国家在水资源的利用；《赫尔辛基规则》第十条强调要防止和阻止对沿岸国的环境污染导致的重大损害。

如果锡拉拉被认定为国际水资源，则玻利维亚不应该放任本国的建设工程对锡拉拉河水质造成不利影响，应当采取一切措施尽可能控制减少其项目对锡拉拉河水域以及对智利的损害。其具体措施可以包括：建设之前，相互通报有关工程，交流相关信息，开展环评并提供必要资料，就可能造成的损害及其预防、减轻和消除措施展开磋商，等等；当损害发生时，玻利维亚应采取积极措施尽可能消除或减轻损害；当造成严重损害时，玻利维亚甚至应承担一定的生态赔偿责任。

## （三）互通信息和资料的义务

2012年，玻利维亚波托西省长（the Governor of the Department of Potosi）宣布了锡拉拉河边的建设项目，包括建造渔场、水坝和矿泉水瓶装厂。<sup>51</sup> 智

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<sup>48</sup> Application, p. 18, para. 36.

<sup>49</sup> Application, p. 22, para. 50.

<sup>50</sup> Report of the United Nations Conference on the Human Environment, Stockholm, Part one, Chap. I (1972).

<sup>51</sup> Note No. 199/39 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 7 May 2012, application, (Annex 27).

利指责玻利维亚并未向其提供 2012 年建造水坝和其他项目的信息，也未通知智利建设军事基地的计划，以及建设军事基地可能会对环境造成不利影响的数据信息。<sup>52</sup> 智利认为玻利维亚有义务进行合作，及时向智利通报可能对共享水资源产生不利影响的计划采取的措施，交换数据和信息，并酌情进行环境影响评价，以便智利能够评估这些计划采取的措施带来可能造成的影响及玻利维亚已经违反的义务。

互通信息与资料是为了确保各流域国能掌握流域的基本信息，对全流域进行统一的管理和规划，进而有效地保护国际水资源的水质、流态、流量等不遭受损害，防止环境污染。各流域国充分分析和交流关于流域的全面情况，有利于他们更好地履行公平合理利用和不造成重大损害等义务，这也是“一般合作义务”的具体表现。

联合国欧经委水公约第六条规定了信息交换，第十三条为沿岸缔约国的信息交流。联合国国际水道法公约第九条规定“水道国应定期交换关于水道状况，特别是关于水文、气象、水文地质和生态性质的，随时可以得到的数据和资料以及有关的预报。”《赫尔辛基规则》第二十九条要求各国向相关的沿岸国通知所属流域的相关情况，信息交换的目的是“为了防止流域国之间由于他们的法定权利与利益而引起的纠纷”。其交换的信息应是有价值的信息，包括“领土内河流的水情、水的利用以及相关的水事活动情况”。《柏林水规则》第五十六条规定“各流域国应当与其他流域国家合作，在适当顾及第五款规定的情形下，尽可能多地提供信息。”其交换的信息应当包括“所有相关项目、规划、计划、行动的技术信息，并包括一切相关影响评价的结果。”在国际流域合作中，流域国在进行可能会对流域生态系统产生不利影响的活动之前，根据一般合作原则的义务要求，应通知可能受影响的沿岸国。并且其通知须附带充分的相关技术资料，有利于受影响的国家能够及时地评估其水资源利用活动将带来的影响，做好充分的准备。

本案中，如果锡拉拉河被认定为国际水资源，玻利维亚应履行互通信息与资料的义务，向智利通知其一系列建设工程的决定，并提供其建造水坝和军事基地等项目的重要信息，以及其项目实施会对水生态环境造成损害的数据信息。

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<sup>52</sup> Application, p. 22, para. 49.

INTERNATIONAL COURT OF JUSTICE

APPLICATION  
INSTITUTING PROCEEDINGS

filed in the Registry of the Court  
on 6 June 2016

DISPUTE OVER THE STATUS  
AND USE OF THE WATERS OF THE SILALA

(CHILE v. BOLIVIA)

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COUR INTERNATIONALE DE JUSTICE

REQUÊTE  
INTRODUCTIVE D'INSTANCE

enregistrée au Greffe de la Cour  
le 6 juin 2016

DIFFÉREND CONCERNANT LE STATUT  
ET L'UTILISATION DES EAUX DU SILALA

(CHILI c. BOLIVIE)



2016  
General List  
No. 162

I. THE MINISTER OF FOREIGN AFFAIRS OF CHILE  
TO THE REGISTRAR OF THE INTERNATIONAL COURT  
OF JUSTICE

Santiago, 30 May 2016.

The Minister of Foreign Affairs of Chile has the honour to communicate to the Honourable International Court of Justice that it has designated H.E. Ambassador Ximena Fuentes Torrijo as its Agent, and H.E. Ambassador María Teresa Infante Caffi and Mr. Juan Ignacio Piña Rochefort, President of the State Defense Council (Consejo de Defensa del Estado), as Co-Agents, for all the effects concerning the Application that the Republic of Chile will file against the Plurinational State of Bolivia, regarding the nature of the Silala River system as a transboundary watercourse and Chile's right as a riparian State.

This communication is made in compliance with Article 40, paragraph 1, of the Rules of Court.

Therefore, all communications relating to this case should be sent to the following address:

Embassy of the Republic of Chile  
Mauritskade 51  
2514 HG, The Hague  
The Netherlands

(Signed) Heraldo MUÑOZ VALENZUELA.

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II. THE AGENT OF THE REPUBLIC OF CHILE  
TO THE REGISTRAR OF THE INTERNATIONAL COURT  
OF JUSTICE

MINISTRY OF FOREIGN AFFAIRS, REPUBLIC OF CHILE

The Hague, 6 June 2016.

I have the honour to transmit herewith the original Application of the Republic of Chile against the Plurinational State of Bolivia, seeking declarations concerning the nature of the Silala River system as an international watercourse and resulting rights and obligations of the Parties under international law. This original documents and its Annexes dated today are signed by the Agent named for these proceedings, with the purpose of their being filed with the Registry in accordance with Article 52, paragraph 1, of the Rules of Court.

This original Application and its Annexes are accompanied by a copy that the undersigned Agent certifies as identical to the original for purposes of communication to the other Party in accordance with Article 43, paragraph 4, of the Statute of the Court.

In addition, I have the honour to transmit herewith 20 additional copies of the Application and its Annexes for the discretionary use of the Court.

The annexed documents are certified as accurate and identical to the originals, and the translations are also certified as true and accurate translations into the English language.

*(Signed)* Ximena FUENTES TORRIJO.

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### III. APPLICATION INSTITUTING PROCEEDINGS

1. I, the undersigned, duly authorized by the Republic of Chile (hereinafter “Chile”), of which I am the Agent, have the honour to submit to the International Court of Justice, pursuant to Article 36 and Article 40 of the Statute, and to Article 38 of the Rules of Court, an Application instituting proceedings on behalf of Chile against the Plurinational State of Bolivia (hereinafter “Bolivia”) in the following matter.

#### I. SUBJECT OF THE DISPUTE

2. The Silala (also referred to as Siloli) River system is an international watercourse whose surface waters originate at approximately 4,400 m above sea level in Bolivian territory. Within a few kilometres, it flows overland and across the border into Chilean territory. The surface flows of the Silala River emanate from groundwater springs in the Orientales and Cajones Ravines, which are fed by an aquifer that itself straddles the border between Bolivia and Chile. Still within Bolivian territory, these waters flow into a common watercourse, the Silala River, which runs in a south-westerly direction towards Chile due to the natural inclination of the terrain.

3. The dispute between the Republic of Chile and the Plurinational State of Bolivia concerns Bolivia’s contention that the Silala River system is not a trans-boundary watercourse and therefore Bolivia is entitled to the use of 100 per cent of its waters. The nature of the Silala River as an international watercourse was never disputed until Bolivia, for the first time in 1999, claimed its waters as exclusively Bolivian.

4. As elaborated in the present Application, Chile requests that the Court adjudge and declare that the Silala River system is in fact and in law an international watercourse whose use by Chile and Bolivia is governed by customary international law. The precise declarations sought are as stated in Section V below.

#### II. JURISDICTION OF THE COURT

5. The Court has jurisdiction over the present dispute in accordance with the provisions of Article 36 of its Statute, by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement, the “Pact of Bogotá”, of 30 April 1948<sup>1</sup>, which reads as follows:

“In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long

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<sup>1</sup> American Treaty on Pacific Settlement (“Pact of Bogota”), 30 April 1948, United Nations, *Treaty Series (UNTS)*, Vol. 30, p. 83, <https://treaties.un.org/doc/Publication/UNTS/Volume%2030/v30.pdf> (Annex 1).

as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

- (a) The interpretation of a treaty;
- (b) Any question of international law;
- (c) The existence of any fact which, if established, would constitute the breach of an international obligation;
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.”

6. Both Bolivia and Chile are parties to the Pact of Bogotá. Chile ratified the Pact of Bogotá on 21 August 1967<sup>2</sup>. Bolivia did so on 14 April 2011, with a reservation to Article VI inasmuch as it considers that “peaceful procedures may also be applied to controversies arising from matters settled by arrangement between the Parties, when the said arrangement affects vital interests of a State”<sup>3</sup>. Bolivia withdrew this reservation on 10 April 2013<sup>4</sup>. No pertinent reservation made by either Party is in force at the present date.

7. Chile has always been willing to engage in discussions with Bolivia concerning a régime of utilization of the waters of the Silala. Chile and Bolivia have engaged in such discussions through a series of bilateral meetings between the years 2004 and 2010. Ultimately, these discussions terminated without result, due to Bolivia’s insistence on denying that the Silala River is an international watercourse and Bolivia’s contention that it has rights to the 100 per cent use of its waters.

8. On 27 March 2014, Chile sent a diplomatic Note repeating its continued interest and willingness to proceed with technical projects and mutual collaboration on the Silala River system<sup>5</sup>. Bolivia responded by insisting once more on its exclusive sovereign rights over this common water resource<sup>6</sup>.

9. On 23 March 2016, President Evo Morales of Bolivia claimed (again) that the Silala River is not an international watercourse and announced his intention to bring an international claim against Chile for the unlawful use of the waters of the Silala<sup>7</sup>. In the circumstances, Chile has elected to initiate the current claim in order to resolve the issue of the status of the Silala River.

<sup>2</sup> Republic of Chile, Decree No. 526, 21 August 1967, published on 6 September 1967 (Annex 2).

<sup>3</sup> Plurinational State of Bolivia, Note OEA-SG-111-11, 9 June 2011, attaching the Instrument of Ratification of the “Pact of Bogotá”, dated 14 April 2011 (Annex 3.1). The Instrument of Ratification was deposited with the Secretary-General of the OEA on 9 June 2011. On 10 June 2011, Chile submitted an objection to Bolivia’s reservation and declared that it precludes the entry into force of the Pact of Bogotá between the Republic of Chile and the Plurinational State of Bolivia, available at: [http://www.oas.org/dil/esp/a-42\\_objecion\\_chile\\_06-15-2011.pdf](http://www.oas.org/dil/esp/a-42_objecion_chile_06-15-2011.pdf) (Annex 3.2).

<sup>4</sup> Plurinational State of Bolivia, Note MPB-OEA-ND-039-13, 8 April 2013, attaching the Instrument of Withdrawal of Reservation to the “Pact of Bogotá”, received on 10 April 2013, available at: <http://www.oas.org/dil/esp/Nota%20%de%20Bolivia%20ND-039-13.pdf> (Annex 3.3).

<sup>5</sup> Note No. 96/72 from the Ministry of Foreign Affairs of Chile to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 27 March 2014 (Annex 4).

<sup>6</sup> Note VRE-DGLFAIT-UAIT-Cs-136/2014 from the Ministry of Foreign Affairs of the Plurinational State of Bolivia to the General Consulate of Chile in Bolivia, 10 April 2014 (Annex 5).

<sup>7</sup> *Prensa Palacio*, “Presidente Morales instruye estudiar alternativas jurídicas para defender aguas del Silala”, La Paz, Bolivia, 23 March 2016, available at: <http://www.presidencia.gob.bo/fuente/noticia.php?cod=4185> (Annex 6.1). See also: *La Nación*, “Evo Morales anuncia que acudirá a instancias internacionales por aguas del Silala”, La Paz,

## III. STATEMENT OF FACTS

10. The Silala River rises from groundwater springs in the Orientales and Cajones Ravines, located at approximately 4,400 m altitude in Bolivia and at a few kilometres north-east of the Chile-Bolivia international boundary. The Silala River crosses the Chile-Bolivia international boundary at a point about 4 km south-east of the Inacaliri Hill, at co-ordinates 22° 00' 34" S-68° 01' 37" W (PSAD56) and at approximately 4,278 m altitude. The flow of the Silala River on entering Chilean territory is about 160 l/s. On Chilean territory, the river receives additional waters from various springs, including those in the Inacaliri and Negra Ravines, before it reaches the Inacaliri River. The total length of the Silala River is about 8.5 km. Of this distance, approximately 3.8 km are located on Bolivian territory and 4.7 km on Chilean territory.

11. The waters of the Silala River have historically and for more than a century been used in Chile for different purposes, including the provision of water supply to the city of Antofagasta and the towns of Sierra Gorda and Baquedano. The waters have also been used for industrial purposes by the Antofagasta (Chile) and Bolivia Railway Company Ltd. (also known as *Ferrocarril de Antofagasta a Bolivia*, henceforth the "FCAB") and by various mining companies, including the State-owned Corporación Nacional del Cobre ("CODELCO").

12. An early cartographic representation of the Silala River appears on the *Mapa de las Cordilleras* of 1884, by Alejandro Bertrand commissioned by Chile<sup>8</sup>. It shows the "Río Cajón" (Cajón River, the name used at the time for the Silala River) on Bolivian territory, crossing into territory administrated by Chile as established under the 1884 Truce Pact between the Parties, and connecting with the "Río S. Pedro" (the continuation of the Inacaliri River).

13. The *Mapa Geográfico y Corográfico* of the Republic of Bolivia of 1890, by Justo Leigue Moreno, Sergeant of the Republic of Bolivia, also shows a water-course identified as "Cajón" on Bolivian territory, connecting with the "Río S. Pedro" on territory administrated by Chile, again as established under the 1884 Truce Pact<sup>9</sup>.

14. Both States have recognized the Silala River as an international watercourse that naturally flows from Bolivia into Chile in numerous documents. These include the 1904 Treaty of Peace and Friendship and related documents, and water rights concessions granted by the two Governments in 1906 (Chile) and in 1908 (Bolivia) to the FCAB.

15. On 20 October 1904, Chile and Bolivia signed the Treaty of Peace and Friendship (mentioned above) that established the definitive international boundary between both States<sup>10</sup>. On that occasion, the signatory States adopted a map, also signed on 20 October 1904 by Chilean Minister of Foreign Affairs Mr. Emilio Bello Codesido and the Bolivian Ambassador in Chile Mr. Alberto Gutiérrez. This map depicts the "Río Silala" crossing the boundary between Bolivia and Chile, between point 15 (*Cerro Silala*) and point 16 (*Cerro Inacaliri*) of that boundary, in the year 1904<sup>11</sup>.

Bolivia, dated 23 March 2016, available at: <http://www.lanacion.cl/noticias/mundo/bolivia/evo-morales-anuncia-que-acudira-a-instancias-internacionales-por-aguas/2016-03-23/113759.html> (Annex 6.2).

<sup>8</sup> Alejandro Bertrand, *Mapa de las Cordilleras*, 1884 (Annex 7).

<sup>9</sup> Justo Leigue Moreno, *Mapa Geográfico y Corográfico*, 1890 (Annex 8).

<sup>10</sup> Treaty of Peace and Friendship entered into by Bolivia and Chile, 20 October 1904 and published in the *Official Gazette* No. 8169 of 27 March 1905 (Annex 9.1).

<sup>11</sup> Map appended to the Treaty of Peace and Friendship, 20 October 1904 (Annex 9.2).

16. On 23 March 1906, Julio Knaudt and Luis Riso Patrón, the Bolivian and Chilean Directors of the respective Boundary Commissions, defined the location of the iron pyramids that would demarcate the boundary, including one located “at the Silala River” (*en el río Silala*)<sup>12</sup>. The existence of the Silala River was also confirmed by the Bolivian Boundary Commission presided over by Bolivian engineer Quintín Aramayo Ortiz, during the demarcation expedition carried out between 28 May and 28 July 1906<sup>13</sup>.

17. On 31 July 1906, Chile granted a concession to the FCAB with respect to the use of the waters of the Silala River on Chilean territory, for an indefinite period of time and for the purpose of increasing the flow of water serving the Antofagasta port<sup>14</sup>.

18. On 28 October 1908, Bolivia also granted a concession to FCAB, with respect to the waters of the Silala River on Bolivian territory<sup>15</sup>. FCAB had requested use of the waters for the operation of its steam engines and permission to construct an intake and canalization works on Bolivian territory<sup>16</sup>.

19. In 1942, the Chile-Bolivia Mixed Boundary Commission (henceforth “Mixed Boundary Commission”) was constituted under the Protocol on the Conservation of Boundary Markers (*Protocolo sobre Conservación de Hitos Fronterizos*)<sup>17</sup>. The Mixed Boundary Commission has confirmed on multiple occasions the existence of the Silala River on both sides of the boundary.

20. On 7 May 1996, Bolivia issued an official press release, responding to certain allegations in the Bolivian press that waters from the Silala River had been artificially diverted to Chile. In the press release, Bolivia rejected such allegations and confirmed that the Silala is a river that originates on Bolivian territory and flows into Chilean territory, Bolivia being the upstream riparian and Chile the downstream riparian. However, Bolivia did give credence to the claim that the waters of the Silala River had been used for over a century by Chile without any benefit to Bolivia, and it announced that it would put this issue on the bilateral agenda<sup>18</sup>.

21. Shortly thereafter, on 31 May 1996, Bolivian Ambassador Teodosio Imaña Castro, Chair of the National Sovereignty and Boundary Commission of the Bolivian Ministry of Foreign Affairs, confirmed that the Silala River naturally flows from Bolivia to Chile, following a consistently downhill course<sup>19</sup>.

22. The referenced documents demonstrate that from the end of the nineteenth century until at least 1996, Bolivia considered the Silala to be an international watercourse. Only in 1997 did it begin to change its position towards a claim that

<sup>12</sup> Minutes signed by Julio Knaudt and Luis Riso Patrón, 23 March 1906, in *Antecedentes Límites Chile-Bolivia*, p. 2 (Annex 10.1).

<sup>13</sup> Report signed by Quintín Aramayo Ortiz, 14 August 1906, in *Antecedentes Límites Chile-Bolivia*, pp. 14-18 (Annex 10.2).

<sup>14</sup> Deed of Concession by the State of Chile of the waters of the Siloli (No. 1892) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 31 July 1906 (Annex 11).

<sup>15</sup> Deed of Bolivian Concession of the waters of the Siloli (No. 48) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 28 October 1908 (Annex 12).

<sup>16</sup> *Ibid.*, p. 2.

<sup>17</sup> Protocol on the Conservation of Boundary Markers, 10 August 1942 (Annex 13).

<sup>18</sup> Press release from the Ministry of Foreign Affairs of Bolivia, 7 May 1996, in *El Diario*, La Paz, Bolivia (Annex 14).

<sup>19</sup> Interview with Bolivian Ambassador Teodosio Imaña Castro, 31 May 1996, in *Presencia*, La Paz, Bolivia (Annex 15).

the Silala is a spring whose waters are situated exclusively on Bolivian territory and for whose use Chile must pay.

23. Indeed, on 14 May 1997, Bolivia “reversed and annulled” FCAB’s 1908 concession for the use of the waters, claiming the disappearance of its object and purpose due to the withdrawal of steam locomotives and the legal inexistence of the company. In this administrative resolution, Bolivia refers to the waters of Silala as “springs” and avoids referring to the Silala as a river<sup>20</sup>.

24. During the year 1999, Chile sent several diplomatic Notes to Bolivia in which it expressed its concern that declarations by Bolivian authorities concerning the waters of Silala, as well as a call for tenders for the use of those waters, did not properly consider the international nature of the Silala River system and Chile’s rights of utilization<sup>21</sup>. In response, Bolivia affirmed the exclusively Bolivian nature of the waters and denied that the Silala is an international watercourse<sup>22</sup>.

25. On 25 April 2000, Bolivia granted the use of the waters of the Silala to the private Bolivian company DUCTEC S.R.L. for the duration of forty years. The concession authorized the commercialization or exportation of the waters for industrial use and human consumption, presumably to Chile, since the concession explicitly excluded their use for potable water and sewerage services in Bolivia without an additional public utility concession, as well as for mining activities by third parties on Bolivian territory<sup>23</sup>. In May 2000, DUCTEC attempted to invoice CODELCO and FCAB for their use of the waters of the Silala, ignoring the existing rights of both companies to the use of those waters on Chilean territory.

26. Chile formally objected to the concession of the waters to DUCTEC on the ground that it disregarded the international nature of the Silala River and Chile’s right to the utilization of its waters<sup>24</sup>.

27. Following this exchange of diplomatic notes, Bolivia and Chile set up a technical commission and agreed to collaborate in the compilation of information on the Silala area and the elaboration of cartography. This joint effort included an aerial photogrammetric flight in November 2001.

<sup>20</sup> Administrative Resolution No. 71/97 by the Prefecture of the Department of Potosi, Bolivia, 14 May 1997 (Annex 16).

<sup>21</sup> Note No. 474/71 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 20 May 1999 (Annex 17); Note No. 017550 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 15 September 1999 (Annex 18); Note No. 1084/151 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 14 October 1999 (Annex 19); Note No. 022314 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 3 December 1999 (Annex 20).

<sup>22</sup> Note No. GMI-656/99 from the Ministry of Foreign Affairs and Worship of the Republic of Bolivia to the General Consulate of Chile, 3 September 1999 (Annex 21); Note No. GMI-815/99 from the Ministry of Foreign Affairs and Worship of the Republic of Bolivia to the Ministry of Foreign Affairs of the Republic of Chile, 16 November 1999 (Annex 22).

<sup>23</sup> Concession Contract for the Use and Exploitation of the Springs of the Silala between the Bolivian Superintendent of Basic Sanitation and DUCTEC S.R.L., 25 April 2000 (Annex 23).

<sup>24</sup> Note No. 006738 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 27 April 2000 (Annex 24).

28. On 26 February 2002, the Bolivian Ministry of Foreign Affairs publicly denied the existence of any kind of bilateral negotiations related to the waters of Silala. It contended that the waters of Silala do not flow naturally to Chile and exclusively pertain to Bolivia. It announced as possible courses of action, the interruption of the flow of the waters to Chile or the initiation of international proceedings before an *ad hoc* tribunal or this Court<sup>25</sup>.

29. Chile rejected Bolivia's qualification of the Silala River as an exclusively Bolivian watercourse. It also rejected any measures that could hinder the flow of the waters of the Silala River into Chilean territory<sup>26</sup>.

30. In 2004, Bolivia and Chile set up a Working Group whose purpose was to continue studying the question of the Silala and to provide elements for a common understanding on the watercourse. In 2006, the question of the Silala was also included as one of the points on a bilateral agenda established between the two States.

31. No progress was made until 2008 when Bolivia accepted to retake the joint technical work as the basis for a possible preliminary agreement. Meetings were held until 2009, in which the Working Group made some progress towards defining a régime of utilization and protection of the waters of the Silala, including the carrying out of joint technical studies of the Silala hydrological system.

32. In July 2010, at a meeting concerning the points of the bilateral agenda, Bolivia came back to its original position of a 100 per cent ownership of the Silala waters and introduced the idea that Chile must pay compensation for its century-long utilization of the waters of the Silala (characterized by Bolivia as Chile's "historic debt"), as part of any agreement concerning the Silala. This position is directly contrary to Bolivia's long-held characterization of the Silala as an international river. It is not in accordance with customary international law, and it is unacceptable to Chile.

33. In October 2010, the Working Group met one more time. On this occasion, Bolivia insisted on its proposal to incorporate Chile's "historic debt" as part of a régime of utilization of the waters of the Silala, which was again rejected by Chile. Bolivia's intransigence on this matter rendered fruitless the carrying out of joint technical studies of the Silala hydrological system and the meetings of the Working Group were terminated without any result.

34. On 7 May 2012, Chile requested information on several projects in the Silala area that had been announced by the Governor of the Department of Potosí, including the construction of a fish farm, a dam and a mineral water bottling plant, in order to ensure preservation of its rights as a riparian State to the utilization of the Silala waters<sup>27</sup>. Bolivia did not respond to Chile's request.

35. Chile repeated its request for information on 9 October 2012<sup>28</sup>. On 25 October 2012, Bolivia responded by again denying that the Silala is an international river, and reaffirmed its full sovereign rights over the use and exploitation of its

<sup>25</sup> Communication No. 143 from the General Consulate of Chile in Bolivia attaching a press release from the Ministry of Foreign Affairs of Bolivia, 26 February 2002 (Annex 25).

<sup>26</sup> Press release from the Ministry of Foreign Affairs of Chile, 4 March 2002 (Annex 26).

<sup>27</sup> Note No. 199/39 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 7 May 2012 (Annex 27).

<sup>28</sup> Note No. 389/149 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 9 October 2012 (Annex 28).



waters<sup>29</sup>. A further exchange of diplomatic Notes followed, in which Bolivia did not change its position.

36. As far as Chile has been able to establish, Bolivia has indeed constructed a fish pond, a military post and houses adjacent to the Silala River. These projects may have adverse effects on the quality and quantity of the waters of the Silala River system. Yet Chile has been informed neither of the plans for these measures nor of any measures taken by Bolivia to prevent and control any resulting pollution of the waters of the Silala River.

37. On 23 March 2016, on the occasion of Bolivia's annual Day of the Sea, the country's President Evo Morales announced Bolivia's intention to defend the waters of the Silala before the competent international organs. President Morales stated that: "Every day, Chile makes an illegal and cunning use of that natural resource without compensating even a cent. This abusive and arbitrary behavior that undermines our heritage cannot continue."<sup>30</sup> Two days later, President Morales accused Chile of "stealing waters from the department of Potosí" and announced Bolivia's decision to present a claim before the International Court of Justice<sup>31</sup>.

38. On 29 March 2016, President Morales made a site visit to the Silala River, together with the Minister of Foreign Affairs, Mr. David Choquehuanca, the Vice-Minister of Foreign Affairs, Mr. Juan Carlos Alurralde and the General State Attorney, Mr. Héctor Arce, among other high authorities. On this occasion, President Morales made clear that "the Chilean authorities are lying when they call this [the Silala] an international river" and again claimed its waters as exclusively Bolivian<sup>32</sup>.

39. Thus, Bolivia continues to deny and to limit Chile's rights as riparian State to the utilization of international watercourses shared by the two countries (as it has done with a second river, the Lauca River, whose waters are partly used by Chile for irrigation purposes<sup>33</sup>).

40. The communications between Chile and Bolivia since 1999 in relation to the waters of Silala, and in particular the recent actions and declarations by Bolivia, demonstrate that there exists a dispute between both States concerning the legal nature of the Silala River as an international watercourse and Chile's right to the utilization of its waters in accordance with customary international law. As to this dispute, both States hold opposite and irreconcilable views.

<sup>29</sup> Note VRE-DGRB-UAM-020663/2012 from the Ministry of Foreign Affairs of the Plurinational State of Bolivia to the General Consulate of Chile, 25 October 2012 (Annex 29).

<sup>30</sup> *Prensa Palacio*, "Presidente Morales instruye estudiar alternativas jurídicas para defender aguas del Silala", La Paz, Bolivia, 23 March 2016, available at: <http://www.presidencia.gob.bo/fuente/noticia.php?cod=4185> (Annex 6.1). See also: *La Nación*, "Evo Morales anuncia que acudirá a instancias internacionales por aguas del Silala", La Paz, Bolivia, 23 March 2016, available at: <http://www.lanacion.cl/noticias/mundo/bolivia/evo-morales-anuncia-que-acudira-a-instancias-internacionales-por-aguas/2016-03-23/113759.html> (Annex 6.2).

<sup>31</sup> *Página Siete Digital*, "Bolivia demandará a Chile por el Silala en La Haya", La Paz, Bolivia, 26 March 2016, available at: <http://www.paginasiete.bo/nacional/2016/3/26/bolivia-demandera-chile-silala-haya-91113.html> (Annex 6.3).

<sup>32</sup> *Camiri.net*, "Evo muestra al mundo que aguas del Silala son de Bolivia", 29 March 2016, available at: <http://www.camiri.net/?p=22817> (Annex 6.4).

<sup>33</sup> The issue concerning the Lauca River first arose in the late 1930s. It centred on Chile's use of its waters for irrigation in the Azapa Valley which ultimately led to a break in Bolivian-Chilean diplomatic relations in 1962.

41. Under these circumstances, Chile has decided to request the Court's judgment on its legal dispute with Bolivia concerning the nature of the Silala River system as an international watercourse and Chile's rights as a riparian State.

#### IV. LEGAL GROUNDS

42. The utilization of international watercourses is governed by customary international law. The principles of customary international law on the non-navigational uses of international watercourses are evidenced by the Convention on the Law of the Non-Navigational Uses of International Watercourses ("UNWC"), signed in New York on 21 May 1997 and entered into force on 17 August 2014<sup>34</sup>, by the case law of this Court and other courts and tribunals, and by State practice.

##### *1. The Definition of an International Watercourse under Customary International Law*

43. Under general international law, a watercourse which crosses two or more States is considered as an "international watercourse". Article 2 of the UNWC reflects customary international law, establishing that:

“(a) ‘Watercourse’ means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

(b) ‘International watercourse’ means a watercourse, parts of which are situated in different states.”

44. There can be no doubt that the Silala River is an international watercourse under customary international law. The Silala River basin shows an uninterrupted and steady gradient of approximately 4.3 per cent on average, from its origins in Bolivia until it reaches the Chilean Inacaliri River. Its headwaters are located in the Bolivian Cajones and Orientales Ravines, at approximately 4,360 and 4,421 m above sea level, respectively. The Silala River crosses the international boundary into Chilean territory at approximately 4,278 m above sea level. At various stretches in Bolivia and Chile its waters run through ravines that were carved out over the course of thousands of years, clear evidence that the Silala is a river and not the product of recent canalization.

45. Bolivia has, during at least 93 years, consistently recognized the nature of the Silala as an international watercourse. It has accepted the cartographic representation of the Silala as a river on a number of occasions, including the official and signed map appended to the 1904 Treaty of Peace and Friendship. Bolivia cannot now deny the fact that the Silala is an international river by referring to it as springs (*manantiales* or *vertientes*). Moreover, the fact that the waters forming the Silala River emerge on the surface through a spring in no way prevents them from forming an international watercourse.

<sup>34</sup> Convention on the Law of the Non-Navigational Uses of International Watercourses, New York, 21 May 1997, UN doc. A/RES/51/229 (1997), available at: [http://legal.un.org/ilc/texts/instruments/english/conventions/8\\_3\\_1997.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf) (Annex 30).

## 2. *The Principle of Equitable and Reasonable Utilization*

46. The principle of equitable and reasonable utilization of international watercourses is customary international law. As the Court has recognized, this principle has its basis in the community of interest of all riparian States in the use of a shared watercourse<sup>35</sup>.

47. Chile maintains that the application of the customary international law on the non-navigational uses of international watercourses supports Chile's past and present utilization of the waters of the Silala River, flowing through the international boundary, as equitable and reasonable.

## 3. *Other Obligations of Bolivia under Customary International Law*

48. Under customary international law, Bolivia is under an obligation to co-operate and prevent transboundary harm to the utilization of the waters of the Silala River system in Chile. Bolivia must also notify and inform Chile of planned measures which may have adverse effect upon Chile's utilization of those waters. This notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable Chile to evaluate their possible effects.

49. Bolivia has violated these obligations by refusing to honour Chile's request for information on the construction of a fish pond and other projects in the year 2012. It has also failed to inform Chile about the construction of a military post and housing that may result in effects on the Silala River that adversely impact Chile. Nor is there any evidence that Bolivia has given due consideration to the environmental impact of these installations and their potential effect on the waters of the Silala River that flow towards Chile.

## V. DECISION REQUESTED

50. Based on the foregoing statement of facts and law, and reserving the right to modify the following requests, Chile requests the Court to adjudge and declare that:

- (a) The Silala River system, together with the subterranean portions of its system, is an international watercourse, the use of which is governed by customary international law;
- (b) Chile is entitled to the equitable and reasonable use of the waters of the Silala River system in accordance with customary international law;
- (c) Under the standard of equitable and reasonable utilization, Chile is entitled to its current use of the waters of the Silala River;
- (d) Bolivia has an obligation to take all appropriate measures to prevent and control pollution and other forms of harm to Chile resulting from its activities in the vicinity of the Silala River;
- (e) Bolivia has an obligation to co-operate and to provide Chile with timely notification of planned measures which may have an adverse effect on shared water resources, to exchange data and information and to conduct where appropriate an environmental impact assessment, in order to enable Chile to

<sup>35</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 56, para. 85.

evaluate the possible effects of such planned measures, obligations that Bolivia has breached.

51. Chile reserves the right to supplement, modify or amplify the present Application in the course of the proceedings.

52. Chile also reserves its right to request the Court to indicate provisional measures, should Bolivia engage in any conduct that may have an adverse effect on Chile's current utilization of the waters of the Silala River.

53. Chile will exercise the right conferred by Article 31 of the Statute of the Court to choose a person to sit as judge *ad hoc*. It will inform the Court of its decision in due course.

54. The undersigned has been designated by the Government of Chile to act as Agent for the purposes of these proceedings. It is requested that all communications relating to this case be sent to the Embassy of the Republic of Chile in the Netherlands, Mauritskade 51, 2514 HG, The Hague, the Netherlands.

Respectfully submitted,

The Hague, 6 June 2016.

(Signed) Ximena FUENTES TORRIJO,  
Agent of the Republic of Chile.

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## CERTIFICATION

MINISTRY OF FOREIGN AFFAIRS, REPUBLIC OF CHILE

6 June 2016.

The undersigned Agent of the Republic of Chile certifies that the documents hereunder listed are true copies and conform to the original documents and that the translations into English made by Chile are accurate translations of the documents annexed to the Application by the Republic of Chile instituting proceedings against the Plurinational State of Bolivia.

*(Signed)* Ximena FUENTES TORRIJO,  
Agent of the Republic of Chile.

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## LIST OF ANNEXES\*

- Annex 1.* American Treaty on Pacific Settlement (“Pact of Bogotá”), 30 April 1948, United Nations, *Treaty Series (UNTS)*, Vol. 30.
- Annex 2.* Republic of Chile, Decree No. 526, 21 August 1967, published on 6 September 1967.
- Annex 3.* 1. Plurinational State of Bolivia, Note OEA-SG-111-11, 9 June 2011, attaching the Instrument of Ratification of the “Pact of Bogotá”, dated 14 April 2011.  
2. Republic of Chile, Objection to the reservation made by the Plurinational State of Bolivia, dated 10 June 2011.  
3. Plurinational State of Bolivia, Note MPB-OEA-ND-039-13, 8 April 2013, attaching the Instrument of Withdrawal of Reservation to the “Pact of Bogotá”, received on 10 April 2013.
- Annex 4.* Note No. 96/72 from the Ministry of Foreign Affairs of Chile to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 27 March 2014.
- Annex 5.* Note VRE-DGLFAIT-UAIT-Cs-136/2014 from the Ministry of Foreign Affairs of the Plurinational State of Bolivia to the General Consulate of Chile, 10 April 2014.
- Annex 6.* Press articles:  
1. *Prensa Palacio*, “Presidente Morales instruye estudiar alternativas jurídicas para defender aguas del Silala”, La Paz, Bolivia, 23 March 2016.  
2. *La Nación*, “Evo Morales anuncia que acudirá a instancias internacionales por aguas del Silala”, La Paz, Bolivia, dated 23 March 2016.  
3. *Página Siete Digital*, “Bolivia demandará a Chile por el Silala en La Haya”, La Paz, Bolivia, dated 26 March 2016.  
4. *Camiri.net*, “Evo muestra al mundo que aguas del Silala son de Bolivia”, dated 29 March 2016.
- Annex 7.* *Mapa de las Cordilleras* by Alejandro Bertrand, 1884.
- Annex 8.* *Mapa Geográfico y Corográfico* by Justo Leigue Moreno, 1890.
- Annex 9.* Treaty of Peace and Friendship entered into by Bolivia and Chile, 20 October 1904:  
1. Treaty of Peace and Friendship published in the *Official Gazette* No. 8169 of 27 March 1905.  
2. Map appended to the Treaty of Peace and Friendship, 20 October 1904.

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\* Annexes not reproduced in print version, but available in electronic version on the Court’s website (<http://www.icj-cij.org>, under “cases”).

*Annex 10. Antecedentes Límites Chile-Bolivia:*

1. Minutes signed by Julio Knautd and Luis Riso Patrón, 23 March 1906 (pp. 1-2).
2. Report signed by Quintín Aramayo Ortiz, 14 August 1906 (pp. 14-18).

*Annex 11.* Deed of Concession by the State of Chile of the waters of the Siloli (No. 1892) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 31 July 1906.

*Annex 12.* Deed of Bolivian Concession of the waters of the Siloli (No. 48) to the Antofagasta (Chili) and Bolivia Railway Company Limited, 28 October 1908.

*Annex 13.* Protocol on the Conservation of Boundary Markers, 10 August 1942.

*Annex 14.* Press release from the Ministry of Foreign Affairs of Bolivia, 7 May 1996, in *El Diario*, La Paz, Bolivia.

*Annex 15.* Interview with Bolivian Ambassador Teodosio Imaña Castro, 31 May 1996, in *Presencia*, La Paz, Bolivia.

*Annex 16.* Administrative Resolution No. 71/97 by the Prefecture of the Department of Potosí, Bolivia, 14 May 1997.

*Annex 17.* Note No. 474/71 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 20 May 1999.

*Annex 18.* Note No. 017550 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 15 September 1999.

*Annex 19.* Note No. 1084/151 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 14 October 1999.

*Annex 20.* Note No. 022314 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 3 December 1999.

*Annex 21.* Note No. GMI-656/99 from the Ministry of Foreign Affairs and Worship of the Republic of Bolivia to the General Consulate of Chile, 3 September 1999.

*Annex 22.* Note No. GMI-815/99 from the Ministry of Foreign Affairs and Worship of the Republic of Bolivia to the Ministry of Foreign Affairs of the Republic of Chile, 16 November 1999.

*Annex 23.* Concession Contract for the Use and Exploitation of the Springs of the Silala between the Bolivian Superintendent of Basic Sanitation and DUCTEC S.R.L., 25 April 2000.

*Annex 24.* Note No. 006738 from the Ministry of Foreign Affairs of the Republic of Chile to the Ministry of Foreign Affairs and Worship of the Republic of Bolivia, 27 April 2000.

*Annex 25.* Communication No. 143 from the General Consulate of Chile in Bolivia attaching a press release from the Ministry of Foreign Affairs of Bolivia, 26 February 2002.

*Annex 26.* Press release from the Ministry of Foreign Affairs of Chile, 4 March 2002.

- Annex 27.* Note No. 199/39 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 7 May 2012.
- Annex 28.* Note No. 389/149 from the General Consulate of Chile in La Paz, Bolivia, to the Ministry of Foreign Affairs of the Plurinational State of Bolivia, 9 October 2012.
- Annex 29.* Note VRE-DGRB-UAM-020663/2012 from the Ministry of Foreign Affairs of the Plurinational State of Bolivia to the General Consulate of Chile, 25 October 2012.
- Annex 30.* Convention on the Law of the Non-Navigational Uses of International Watercourses, New York, 21 May 1997, UN doc. A/RES/51/229 (1997).
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